

COMPLIANCE BOARD OPINION NO. 99-19

November 18, 1999

Mr. Dan Fefferman

The Open Meetings Compliance Board has considered your complaint that the Task Force to Study the Effects of Cult Activities on Public Senior Higher Education Institutions violated the Open Meetings Act by failing to prepare written minutes. You alleged that the Task Force improperly offered tape recordings in lieu of minutes.¹ For the reasons set forth below, the Compliance Board finds that, although audiotapes do not suffice as minutes, the Task Force's procedures for preparing minutes complied with the Act.

I

Complaint and Response

Your complaint stated that on August 24, 1999, you requested access to the minutes of the Task Force's meetings. In response to your request, you received the following reply from the Task Force staff: "As you are aware, the Task Force proceedings were audio recorded. These recordings serve as meeting minutes. I believe that you or your representatives have visited the [University] System [of Maryland] Headquarters office to copy these tape recordings." You indicated that the tape recordings did not have the information required by the Open Meetings Act to be in minutes and that the Task Force's failure to provide minutes violated the Act.

In a timely response on behalf of the Task Force, its Chairman, William T. Wood, Esquire, denied that the Act had been violated. Mr. Wood noted that the Task Force had been provided with no budget and was given staff support by personnel from the University System of Maryland who had other duties and who were not always able to attend meetings.

¹ Your letter also alleged that the Task Force's failure to prepare minutes violated its procedural rules. Because this allegation is outside the jurisdiction of the Compliance Board, the Board will not address it.

Under these circumstances, some delay in the preparation of minutes was inevitable. The chronology included with Mr. Wood's response showed the following lag times:

MEETING DATE	MINUTES APPROVED
May 25, 1999	June 7, 1999
June 7, 1999	September 2, 1999 ²
June 18, 1999	September 2, 1999
June 29, 1999	September 2, 1999
July 14, 1999	September 2, 1999
July 27, 1999	September 15, 1999
August 9, 1999	September 15, 1999
August 10, 1999	September 15, 1999
September 2, 1999	September 15, 1999

With respect to the staff's response to your request for minutes, Mr. Wood explained that the phrase "these recordings serve as meeting minutes" was intended merely to suggest that detailed information about the meetings was available through the tapes.

II

Analysis

In §10-509(b) of the State Government Article, the Open Meetings Act requires that, "As soon as practicable after a public body meets, it shall have written minutes of its session prepared." The content of those minutes is specified in §10-509(b). Members of the public have a right under §10-509(d) to inspect the minutes of open meetings.

² Information supplied by Mr. Wood suggested that minutes for the meeting of June 7 were prepared and anticipated to be approved at a Task Force meeting on June 29. At that meeting, however, no quorum was present, and therefore action on the minutes was deferred until the later meeting.

In a recent opinion, Compliance Board Opinion No. 99-18 (November 4, 1999), we gave the following guidance concerning implementation of the Act's requirement about minutes:

- ◆ The "practicability" standard in the Act means that minutes must be prepared within a reasonable time, not necessarily by the next meeting.
- ◆ A public body may not abandon its responsibility to prepare reasonably timely minutes because of resource constraints. However, practical considerations, such as a staffing shortage, can justify some delay in preparing minutes.
- ◆ Offering access to tape recordings does not comply with the Act's requirement that written minutes be prepared.

In that opinion, we found that a public body had violated the Act by failing to prepare minutes for years after meetings. The Act is violated, we observed, if a public body "tolerate[s] routine delays of several months or longer in preparing minutes." Compliance Board Opinion No. 99-18, at 4. If the Act's requirements are to be met, "the cycle of minutes preparation should parallel the cycle of a public body's meetings, with only the lag time needed to draft and review minutes." *Id.*

In our opinion, the chronology supplied by the Task Force suggests that it satisfied the latter standard. All of the minutes were approved within three months of the meeting date. It is apparent to the Compliance Board that the Task Force recognized the need to prepare minutes, assigned responsibility for their preparation, and approved them within a reasonable time. Although grouping the minutes of four different meetings for approval at one time is not ideal, constraints on the Task Force's staffing made the relatively brief delays understandable and consistent with the Act's practicability standard.

The Task Force erred, however, when its response to your request suggested that the audiotapes of its meeting could be regarded as minutes. They may not. Yet, because all of the minutes that you sought were approved within about three weeks of your request to the Task Force, the erroneous statement in the Task Force's response to you was harmless and not itself a violation of the Act.

III

Conclusion

The Compliance Board finds that the Task Force complied with the Act's requirement that minutes be prepared "as soon as practicable" after a meeting.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
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